

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK**

**DR. A., NURSE A., DR. C., NURSE D., DR. F., )  
DR. I., THERAPIST I., NURSE J., DR. M., )  
NURSE M., NURSE N., DR. O., DR. P., DR. S., )  
NURSE S. and PHYSICIAN LIAISON X., )**

Plaintiffs, )

v. )

**KATHY HOCHUL**, Governor of the State of New York, in her official capacity; **Mary T. Bassett**, Commissioner of the New York State Department of Health, in his official capacity; and **LETITIA JAMES**, Attorney General of the State of New York, in her official capacity, )

Defendants. )

Case No. 1:21-cv-1009 (DNH) (ML)

**Renewed Motion for TRO/PI**

**PLAINTIFFS’ RENEWED MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND A PRELIMINARY INJUNCTION.**

1. Come now Plaintiffs,<sup>1</sup> who respectfully request that this Court enter a temporary restraining order (with notice) and preliminary injunction pursuant to Fed. R. Civ. P. 65 against Governor of New York Kathy Hochul, Commissioner of the New York State Department of Health Mary T. Bassett, and Attorney General of New York Letitia James, and their agents, employees and successors in office, and those acting in concert with them, respecting the Vaccine Mandate (“Rule 2.61”) challenged in this action, which mandates COVID-19 vaccination of health care workers, including Plaintiffs, with no provision for a religious *exemption*, which exemption Plaintiffs seek pursuant to their newly accrued rights under federal

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<sup>1</sup> Technologist P, who moved to FL after her termination, has elected not to continue in the lawsuit. (Am. Cmplt. at p.1, FN 1)

law (particularly the U.S. Department of Health and Human Service’s COVID-19 vaccine “CMS Mandate” for Medicaid- and Medicare-participants requiring that covered staff—including Plaintiffs in this case—be able to seek “religious *exemptions*”). Plaintiffs also seek a temporary restraining order (with notice) and preliminary injunction respecting Defendants’ new rule forbidding unemployment benefits as a result of being terminated for refusing COVID-19 vaccinations.

2. Plaintiffs are suffering ongoing irreparable harm as a result of Rule 2.61 and the new unemployment rule’s flagrant violation of their First Amendment and federal law rights, loss of employment with no avenue for recovering lost wages (because of Rule 2.61 and the State’s sovereign immunity), and loss of professional standing for their religiously motivated refusal to be vaccinated.

3. And in particular, Plaintiffs seek an Order:

(A) Restraining and enjoining the Defendants, their officers, agents, employees, attorneys and successors in office, and all other persons in active concert or participation with them, from enforcing, threatening to enforce, attempting to enforce, or otherwise requiring compliance with Rule 2.61 such that:

(1) The challenged Rule 2.61 is suspended in operation to the extent that the Department of Health is barred from enforcing any requirement that employers covered by the CMS Mandate continue to forbid religious *exemptions* from COVID-19 vaccination or that they continue to revoke any exemptions such employers already granted before Rule 2.61 came into effect, including the exemptions already granted to certain of the Plaintiffs herein;

(2) The Department of Health is barred from interfering in any way with the granting of religious exemptions from COVID-19 vaccination going forward within facilities covered by the CMS Mandate;

(3) The Department of Health is barred from taking any action, disciplinary or otherwise, against the licensure, certification, residency, admitting privileges or other professional status or qualification of any of the Plaintiffs on account of their seeking or having obtained a religious exemption from mandatory COVID-19 vaccination.

(B) Restraining and enjoining the Defendants, their officers, agents, employees, attorneys and successors in office, and all other persons in active concert or participation with them, from enforcing, threatening to enforce, attempting to enforce, or otherwise requiring compliance with the rule forbidding unemployment benefits as a result of being terminated for refusing COVID-19 vaccinations.

The grounds for this motion are that the rule forbidding unemployment benefits as a result of being terminated for refusing COVID-19 vaccinations violates the Free Exercise Clause of the First Amendment, and that Rule 2.61, both facially and as applied to these Plaintiffs, violates:

The Supremacy Clause of the U.S. Constitution by contravening the CMS Mandate's guarantee that covered staff (including Plaintiffs) may seek religious *exemptions* under Title VII of the Civil Rights Act of 1964, or by contravening Title VII itself as authoritatively construed

by U.S. Department of Health and Human Services in the CMS Mandate as guaranteeing the right to seek such exemptions;

Plaintiffs also continue to proceed anonymously under their earlier filed (and unopposed) motion (ECF No. 5) because their interest in anonymity outweighs “the public’s interest in disclosure and any prejudice to the defendant,” *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189 (2d Cir. 2008).

Should this motion be denied, Plaintiffs also move for an injunction or stay pending appeal under Fed. R. Civ. P. Rule 8(a)(1).

Plaintiffs rely upon the Verified Amended Complaint and attendant exhibits, Declaration of Dr. Scott French and attached exhibits, and Memorandum of Law filed contemporaneously with this motion.

January 30, 2022

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